

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5395 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AB TALAVIA & ORS.

Versus

DIRECTOR OF SOCIAL DEFENCE DEPARTMENT

Appearance:

MR DM THAKKAR for Petitioners

MR MUKESH PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/05/97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties. The counsel for the petitioner states that the petitioner No.1 has already left the Government service, and as such, his name should be deleted, to which the counsel for the respondents has no objection. Order accordingly. The name of petitioner No.1 is deleted from this Special Civil Application. The Special Civil Application is dismissed so far it relates to the petitioner No.1.

2. The petitioners, Probation Officers in the office of the Director of Social Defence Department, Gujarat State, Ahmedabad, filed this Special Civil Application before this Court and challenge has been made to the order of the respondent No.1 to terminate their services. The petitioners have challenged the order of the termination of their services on the ground that it is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, and contrary to the administrative policy laid down by the Government from time to time. Both the petitioners were appointed as Probation Officer in the pay-scale of 425-700 under the order dated 12th May, 1977, and they have been appointed after selection and have been placed on probation. As per the recruitment rules, the petitioners were required to pass the departmental examination and examination in Hindi and Gujarati. The other conditions have been fulfilled by the petitioners, but the condition of the passing of the departmental examination as required under the aforesaid rules was not fulfilled.

3. Now it is not necessary to give out all the detailed facts of the case as it is not in dispute that the petitioner No.3 has passed the departmental examination later on and his services were regularised. So far as the petitioner No.2 is concerned, he has been given one more chance for passing of the departmental examination by the department, subject to the approval of the State Government. It is not in dispute between the parties that the petitioner No.2 has passed the examination, but his result was not declared as it was subject to the approval of the State Government, and the latter declined to approve the same. However, the record of the examination of the petitioner No.2 has been called and he passed the examination.

4. The learned counsel for the respondents contended that the chance has been given by the department subject to the approval of the Government, and as such, when the approval was not granted, the passing of the examination by the petitioner No.2 is of no consequence and his termination order does not call for interference.

5. I do not find any justification in this contention of the counsel for the respondents. The petitioner No.2 was appointed, as stated earlier, after selection and it was a regular appointment. It is not the case of temporary appointment or adhoc appointment or a back-door entry. It is true that the appointment of

the petitioner was subject to the passing of the departmental examination, but when the petitioner No.2 has already passed the examination, I fail to see any justification in the action of the respondent-State not to accord the sanction to the result of the examination. Moreover, the services of the petitioners were terminated under the order dated 17th October, 1984 only on the ground of non-passing of the departmental examination, that is after seven years, their services were terminated. The order of termination has been stayed by this Court as it transpires from the order of this Court dated 23rd October, 1984. So the petitioners are working in the department since 1977 and more than 19 years have already passed. In view of this fact, now it will not be in the interest of justice to ask the petitioner to go to home. The departmental examination has to be passed and that examination has been passed, may be on a grace chance given to the petitioner No.2.

6. Taking into consideration the totality of the facts of this case, this writ petition deserves to be accepted and the same succeeds. The orders annexure 'G' dated 17th October, 1984 at page Nos.31 and 33 relating to the termination of the services of the petitioners No.2 and 3 are quashed and set aside. Rule is made absolute with no order as to costs.

zgs/-